

REMARKS

In response to the rejection of claims 1-14 under 35 USC § 112, "hood-like" has been deleted from claim 1 and claim 2.

In response to the objection to the amendment filed December 19, 2002 under 35 USC § 132 on the ground that "solely" is not supported by the original disclosure, the applicants point to page 8, lines 13-18 of the specification. There it is stated that the upper cap member 20 is secured by a connection member 23 at its upper end solely by an upper covering member 32. Thus, there is clear support for "solely" in the claims. In contrast, Hoegedahl (Swedish Patent No. 374578) does not disclose its cap member being retained at its upper end solely by an upper covering cap. It is submitted that this difference renders all of the claims in the present application patentable over Hoegedahl.

In response to the rejection under 35 USC § 103 and to the Examiner's "Response to Arguments", the essential point is the Examiner's observation "Thus, it would have been obvious to form the two members (16) and (20) as one member, wherein a space would be formed for receipt of members (29, 30)." However, as is best seen in Figs. 6 and 7 of Hoegedahl, the member 20 is a separate fitting secured to the profile 25 below the upper covering 16. This separate fitting is formed with a bent flange or hook member 38, which is engageable by an upwards bent flange part 39 at the end of the lower cap member 14 or 15 (Fig. 7). It is in fact this snap connection between the upper end of the lower cap member 14 and 15 that should be

compared with the dismountable retaining of the upper end of the cap member 20 of the invention solely by the upper covering cap 32.

As is shown in Fig. 8 of Hoegedahl, however, the lower end of each of the legs 16a and 16b of the unitary U-shaped upper cap 16 is already bent into a U-shaped profile for snap engagement with a downwards bent hook or flange part 40 of a further separate fitting 21 mounted side by side with the separate fitting 20 and secured to the profile 22 extending next to the profile 25.

The inevitable conclusion from this description corresponding to the first three paragraphs on page 5 of Hoegedahl is that, due to the bending of the lower end of each of legs 16a and 16b into its U-shaped profile, which is, as such, integral with the leg 16a or 16b, it would simply not be possible, at the same time, to modify Hoegedahl by also forming the member 20, disclosed as a separate fitting, by bending an integral part of leg 16a or 16b.

With the Office Action, the Examiner provided a copy of Fig. 8, with an area circled, and stated that, in the circled area, the cap member 16 contacts the engagement member 20.

However, it appears that Fig. 8 shows no contact between the cap member 16 and the

engagement member 20. Instead, the downwardly bent portion of the cap member 16 is spaced to the left of the nearby upstanding flange. As can be appreciated from Figs. 6 and 7, the remaining portions of the engagement member 20 extend to the right of its upstanding flange, and, therefore, would be spaced even farther from the downwardly bent portion of the cap member 16. Accordingly, there is no contact between the two parts.

that - protruding flange? clearly 16a,b contacts 40 of 21 bent 14,15 contact 38 engaging part 38

Furthermore, it would not have been obvious to either provide contact between the two parts or, more importantly, to form the two parts as one member. In order for obviousness to exist, the references themselves must suggest the modifications necessary to satisfy the limitations of the claims. In the present case, nothing at all suggests making the cap member 16 of Hoegedahl as one member with the engagement member 20. The only incentive for such a modification is the limitation of the claims of the present application and the Examiner's engineering innovation. It would not have been obvious to one having ordinary skill in the art and viewing the Hoegedahl reference to make the modification proposed by the Examiner. Although there are situations in which constructing in one piece what had previously been more than one piece can be a matter of routine skill in the art, the present situation is not one of those cases.

In the case of *In re Dembiczak*, 50 USPQ2d 1614, 1617 (1999), the Federal Circuit said "Our case law makes clear that the best defense against the subtle but powerful attraction of a hindsight-based obviousness analysis is vigorous application of the requirement for a showing of the teaching or motivation to combine prior art references." In the present case, a reference to show the modification is not even present, and so the law requires at least a showing of the teaching or motivation to modify the prior art reference. The Federal Circuit has made clear that there is a need for specificity in this regard. In the case of *In re Kotzab*, 55 USPQ2d 1313, 1317 (2000), the Federal Circuit said "particular findings must be made as to the reason the skilled

artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed".

The Examiner's attention is also directed to MPEP § 2144.04 V.B. which relates to the obviousness of making things integral. That section cites *In re Larson*, which involved making a structure of a brake drum integral with a clamping means, instead of the prior art structure of a brake disk and clamp comprising several parts rigidly secured together as a single unit. There, the prior art disclosed several parts rigidly secured together as a single unit. In the present situation, not only are the cap 16 and element 20 of the prior art, Hoegedahl, not rigidly secured together, but also there appears to be no connection between them whatever. Thus, there is no indication that *In re Larson* the court would have found it obvious to make the cap 16 and the element 20 of Hoegedahl in one piece. In another case cited in the same MPEP section, the court found that making integral something that had previously been made in four bolted pieces was not obvious, despite the fact that the pieces of the prior art were already secured together. In contrast, in the present case, there is no connection between the cap 16 and the element 20 of the prior art, Hoegedahl.

In view of the foregoing, it is submitted that all of the claims are allowable and that the application is in condition for allowance. An early notice to that effect is respectfully requested.

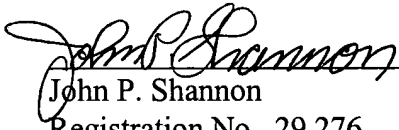
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Appl. No. 09/647,700

If the Examiner believes that any issues remain that might be resolved by discussion, she is invited to call the undersigned at the number provided below.

If any additional fee is required with the filing of this Amendment, the Commissioner is authorized to charge the necessary fee or credit any overpayment in connection with this filing to Deposit Account No. 22-0261.

Respectfully submitted,

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